IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1120 OF 2005

Santosh Kumar Kejriwal
and Another .. .Petitioners

V/s

State of Maharashtra
and Others .. Respondents

Mr. Anand Kumar & Daulat Jehangir for petitioners

Coram: V.M. Kanade, J.
Dated: 26/04/2005.

P.C. :-

1 The petitioners are challenging the order of issuance of process passed by the Metropolitan Magistrate,47th Court at Esplanade, Mumbai on the complaint bearing No.1686/S/2003 filed by the respondent No.2 under section 138 of the Negotiable Instruments Act.

2 It is submitted by the learned counsel appearing on behalf of the petitioner that cheque in question was returned by the bank on the ground of structural defect in the said cheque. It is submitted that therefore, no offence was made out under the provisions of section 138 of the Negotiable Instruments Act.

3 The learned counsel for the petitioners has relied on the judgment of this court in the case of B**abulal Nainmal**

**Jain v. Khimji Ratanshi Dedhia and Others** reported in 1**998 CRI L.J. 4750**. He has also invited my attention to the bank memo which is annexed at page 20 of the application.

4 It is not possible to accept the submission made by the learned counsel for the petitioners. It cannot be said that the cheque was returned on account of structural defect . From the perusal of the bank memo it can seen that the cheque was returned because it was noticed by the bank that signature of the drawer was not on record. This lapse on the part of the drawer of the cheque cannot be said to be a structural defect in the cheque. What is a structural defect is mentioned in the judgment in the case of Babulal Nainmal Jain (supra). In paragraph-2 of the cited judgment it is clearly mentioned that the structural defect would be in the form of want of signature, date has not been properly written, figure of the amount has been overwritten or erasures in the drawer's name etc. then in that case it would not amount to an offence punishable under section 138 of the Negotiable Instruments Act. None of the categories mentioned in the said judgment are applicable to the cheque in question. The petitioners will have to prove that none of the petitioners had signed the cheque or that the cheque was forged. This can be done only after the evidence is adduced in the trial court by both the parties. In the result, criminal writ petition is dismissed. All questions raised in this

petition are kept open.

( V.M. Kanade,J.)